

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

**WASHINGTON HARBOUR, SUITE 400**

**3050 K STREET, NW**

**WASHINGTON, D.C. 20007-5108**

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

NEW YORK, NY

LOS ANGELES, CA

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES

MUMBAI, INDIA

DIRECT LINE: (202) 342-8518

EMAIL: tcohen@kelleydrye.com

January 30, 2017

**Via ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: *Ex Parte* Filing of the American Cable Association on the Connect America Fund, WC Docket No. 10-90**

Dear Ms. Dortch:

Since the Federal Communications Commission (“Commission”) issued the Further Notice of Proposed Rulemaking last May seeking comment on assigning weights to different performance tiers in the Connect America Fund (“CAF”) Phase II competitive bidding process (or auction),<sup>1</sup> representatives of the American Cable Association (“ACA”) have met with staff of

<sup>1</sup> *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 16-64, ¶¶ 205-229 (rel. May 26, 2016) (“CAF Phase II Auction Order”). *See also id.*, ¶¶ 14-18. The Phase II auction program provides funding over a 10-year term. In seeking to establish technology-neutral standards for the auction, the Commission adopted four performance tiers (speed and data usage allowance) and differentiated between lower latency ( $\leq 100$  ms) and higher latency ( $\leq 750$  ms and MOS of  $\geq 4$ ) based on “the statutory goal in section 254 of ensuring that consumers in rural and high-cost areas of the country have access to advanced telecommunications and information services that are reasonably comparable to those services in urban areas, at reasonably comparable rates.” The four performance tiers are:

Performance Tier	Speed	Usage Allowance
Minimum	$\geq 10/1$ Mbps	$\geq 150$ GB
Baseline	$\geq 25/3$ Mbps	$\geq 150$ GB or U.S. median, whichever is higher

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the Commissioners and the Commission and have submitted filings documenting its approach to this issue. In this submission, ACA proposes the following weighting methodology to ensure consumers residing in unserved areas and their communities have access to broadband service with the greatest long term value, as well as broadband service reasonably comparable to that accessed in urban areas over the 10-year duration of the program.<sup>2</sup>

### ACA Proposed Weighting Methodology

Performance Tier	Proposed Weighting Percentage <sup>3</sup>
Minimum	+5%
Baseline	0%
Above Baseline	-60%
Gigabit	-15%
Higher Latency (regardless of speed)	+15%

ACA’s methodology reflects the fact that, based on market data and industry trends, the Minimum and Baseline tiers either do not or will not meet consumer needs, most urban consumers will be subscribing to the Above-Baseline tier in the next five years, and the Gigabit tier provides additional “future-proof” value over a 10 year period. In addition, the

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<b>Above Baseline</b>	≥ 100/20 Mbps	Unlimited
<b>Gigabit</b>	≥ 1 Gbps/500 Mbps	Unlimited

<sup>2</sup> 47 U.S.C. § 254.

<sup>3</sup> The weighting would be additive. Thus, for instance, a bid to provide Gigabit performance would have a weighting percentage of  $-60\% + -15\% = -75\%$ . In addition, the weighting is calculated as a percentage of the reserve price, which is an objective measure used by the Commission, based on its development of the Connect America Cost Model, to determine the cost to serve unserved locations. Further, basing the results of weighting on the reserve price – as opposed to basing weights on a percentage of bid price – will lead to a greater certainty by bidders in knowing the value of their bids and therefore greater participation in the auction, which will drive prices to more cost-effective levels.

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Commission's findings indicate that consumers believe higher latency services to be unacceptable.<sup>4</sup>

ACA's approach will enable bidders, regardless of which network technology they deploy – satellite, fixed wireless, or wireline with either copper, coax, or fiber – to have a similar opportunity to prevail in the auction.<sup>5</sup> This will maximize participation in the process, including participation by smaller, experienced wireline providers, who would be bidding to provide higher performance service in areas where they had no infrastructure – and would thus serve the public interest by ensuring the efficient distribution of limited Connect America funding.

### **Current Consumer Demand for Online Content, Applications, and Other Services and Provision of Broadband Service**

Today, consumers are accessing vast amounts of content, applications, and data online. This is driven largely by consumption of bandwidth-intensive video applications accessed by consumers with multiple Internet-enabled devices. For example, 55 percent of U.S. households have at least one over-the-top video subscription.<sup>6</sup> Netflix alone has 49 million subscribers in the U.S.<sup>7</sup> Consumers also use significant amounts of bandwidth for purposes other than entertainment, including for a range of educational services, job training, health videos and

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<sup>4</sup> ACA's proposal, in seeking to achieve long term value for consumers in eligible areas, meet the "reasonably comparable" requirement in Section 254, and distribute support efficiently, stands in contrast to the recent submission by Hughes Network Systems, which prioritizes "breadth of broadband coverage" over other criteria. *See* Letter from L. Charles Keller, Wilkinson Barker Knauer, LLP, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (Jan. 13, 2017).

<sup>5</sup> ACA's proposal is consistent with the principle of competitive neutrality. As the Commission explained in the Order granting a waiver to New York State from the Phase II process, "[t]he principle of competitive neutrality does not require all competitors to be treated alike, but 'only prohibits the Commission from treating competitors differently in 'unfair' ways.' Standards which are designed to meet reasonable regulatory objectives are not 'unfair' simply because some technologies or service providers cannot meet those standards." *See Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Order, FCC 17-2, ¶ 29 (rel. Jan. 26, 2017).

<sup>6</sup> *See* "Video Streaming Quality Report 2016," Verizon Digital Media Services, available at <https://www.verizondigitalmedia.com/qm-report/>.

<sup>7</sup> This represents a 10 percent increase in subscribers. *See* "Netflix Q416 Letter to Shareholders," (Jan. 18, 2017) available at <http://files.shareholder.com/downloads/NFLX/3700834384x0x924415/A5ACACF9-9C17-44E6-B74A-628CE049C1B0/Q416ShareholderLetter.pdf>.

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news.<sup>8</sup> As for use of multiple devices, including smart TVs, gaming consoles, smartphones, tablets, and other Wi-Fi enabled electronics, North American households are using an average of seven connected devices daily.<sup>9</sup> The number of IoT devices in residential homes – including thermostats, kitchen appliances, and security systems – running constantly in the background, consuming bandwidth, now numbers over four billion.<sup>10</sup> Because of these increased consumer demands, the average U.S. household now consumes more than 190 GB of data online each month.<sup>11</sup>

As a result, consumer demand for broadband service already exceeds the Minimum and Baseline tiers, and this discrepancy will be even greater by the time the auction begins and as the deployments occur and service is made available. The most recent *Measuring Broadband America Report* found the median speed for consumer fixed broadband in the U.S. was 39 Mbps in September 2015,<sup>12</sup> indicating that more than half of consumers subscribe to services that exceed 25 Mbps.

Evidence of significant consumer demand is also demonstrated by the fact that providers are offering high-bandwidth residential services. For instance, Comcast offers speeds of at least 150 Mbps throughout its footprint; RCN offers speeds up to 155 Mbps in most markets; Cox and Time Warner Cable offer maximum speeds of 300 Mbps in most markets; and Verizon offers

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<sup>8</sup> See “The growing value people place on broadband,” Pew Research Center (Dec. 21, 2105) available at <http://www.pewinternet.org/2015/12/21/2-the-growing-value-people-place-on-broadband/>.

<sup>9</sup> See “Households now use an average of seven connected devices every day: report,” cantech letter (Aug. 25, 2016) available at <http://www.cantechletter.com/2016/08/households-now-use-average-seven-connected-devices-every-day-report/>.

<sup>10</sup> See “Gartner Says 6.4 Billion Connected ‘Things’ Will Be in Use in 2016, Up 30 Percent From 2015,” Gartner (Nov. 10, 2015) available at <http://www.gartner.com/newsroom/id/3165317>.

<sup>11</sup> See “iGR: Average Monthly Broadband Usage is 190 Gigabytes Monthly Per Household,” telecompetitor (Sept. 26, 2016) available at <http://www.telecompetitor.com/igr-average-monthly-broadband-usage-is-190-gigabytes-monthly-per-household/>.

<sup>12</sup> See “2016 Measuring Broadband America Fixed Broadband Report, A Report on Consumer Fixed Broadband Performance in the United States,” Federal Communications Commission (Dec. 1, 2016) available at [https://www.fcc.gov/reports-research/reports/measuring-broadband-america/measuring-fixed-broadband-report-2016#\\_Toc464398833](https://www.fcc.gov/reports-research/reports/measuring-broadband-america/measuring-fixed-broadband-report-2016#_Toc464398833) (“2016 Measuring Broadband America Report”).

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500 Mbps in all FiOS markets.<sup>13</sup> In addition, most major broadband providers already provide data allowances well above 150 GB to residential customers.<sup>14</sup> Cox has a 1 terabyte data allocation for all Internet tiers; Comcast data allocation for all XFINITY internet subscribers is 1 terabyte; and all AT&T U-verse tiers receive 1 terabyte.<sup>15</sup> RCN, WOW!, and Charter offer unlimited data usage.

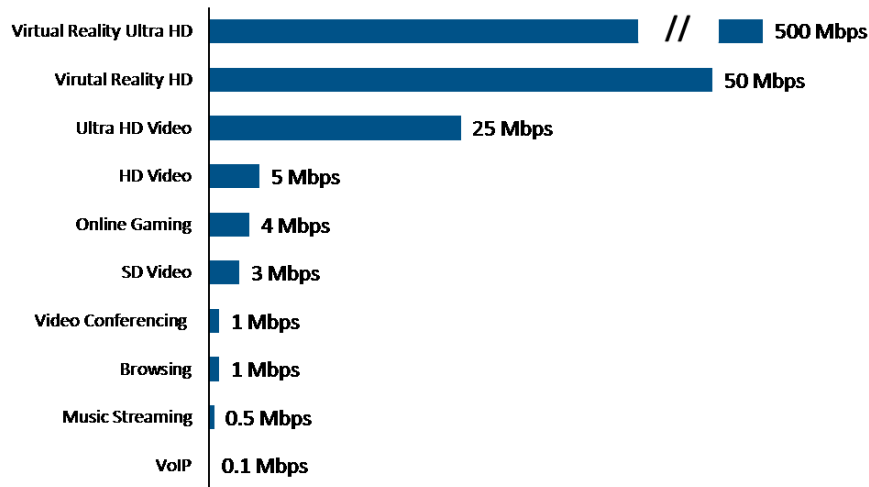
### **Near and Mid-Term Growth in Consumer Demand and the Long Term Value of Higher Performance Broadband Service**

Consumer demand to access massive amounts of online data and use much higher performance broadband will significantly increase in years ahead. Major research companies and industry leaders agree that over the next 10 years consumers will want use of new technologies such as ultra-high-definition streaming, virtual reality, and advanced cloud-based applications – all of which require enormous bandwidth. (See Figure 1.)

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- <sup>13</sup> See “Multichannel High-Speed Data Pricing Report, Mid-2016, SNL Kagan, available via subscription at <https://www.snl.com/web/client?auth=inherit#news/document?id=37741727&KeyProductLinkType=2>.
- <sup>14</sup> See “MVPDs increase internet data allocation in 2016,” SNL Kagan available via subscription at <https://www.snl.com/InteractiveX/Article.aspx?id=38087864>.
- <sup>15</sup> Even where a provider may charge overage fees, in general, there are limits to how much a customer can be charged per billing cycle.

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*Figure 1: Bandwidth Requirements for Various Activities<sup>16</sup>*



Adoption of connected video devices with high-resolution capabilities – combined with the cord-cutting trend – will also drive this data demand. Millennials, who are good predictors of future demand by all users, watch 34 percent more paid online video than the rest of the adult population.<sup>17</sup>

Future applications in telehealth and education will depend heavily on real-time performance, a priority of the Commission's, which will further drive demand and use.<sup>18</sup> These

<sup>16</sup> For Virtual Reality Ultra HD and HD see "ARRIS Gives Us a Hint of the Bandwidth Requirements for VR," The Online Reporter (June 17, 2016) available at <http://www.onlinereporter.com/2016/06/17/arris-gives-us-hint-bandwidth-requirements-vr/>; for Ultra HD, HD, and SD Video see "Internet Connection Speed Recommendations," available at <https://help.netflix.com/en/node/306>; for Online Gaming, Video Conferencing, and Browsing, see "Broadband Speed Guide," Federal Communications Commission, available at <https://www.fcc.gov/reports-research/guides/broadband-speed-guide>; for Music Streaming and VoIP, see "CenturyLink Says Gigabit Connections Are Overkill," DSL Reports (Aug. 10, 2016) available at <http://www.dslreports.com/shownews/CenturyLink-Says-Gigabit-Connections-are-Overkill-137605>.

<sup>17</sup> See "Video Streaming Quality Report 2016," Verizon Digital Media Services, available at <https://www.verizondigitalmedia.com/qm-report/>.

<sup>18</sup> See *CAF Phase II Auction Order*, ¶ 6 ("In the *USF/ICC Transformation Order*, the Commission required recipients of high-cost universal service support to offer broadband service with latency suitable for real-time applications, such as voice over Internet

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applications will likely include advanced collaboration platforms with instant document sharing, online interactive lessons and classrooms, remote check-ups, and virtual-reality training programs, and require very robust broadband networks.

Additionally, the number of IoT devices in residential homes, which consume bandwidth in the background, is expected to increase three-fold by 2020 to more than 13 billion units. Many of these devices will have video capability, driving the need for increased bandwidth and speed.<sup>19</sup>

As a result of use of these upgraded or new technologies, consumers will need greater speeds and use more devices to access more data. Cisco forecasts that in the U.S., the average fixed connection speed will rise to 52.1 Mbps by 2020 and the average number of devices and connections per capita will rise to 12.3.<sup>20</sup> As speed demands increase, technologies that cannot provide high-speed broadband access will continue to lose share.<sup>21</sup> Further, given online video consumption and other trends, there is little doubt the increased demand for access to greater bandwidth over multiple devices will continue beyond 2020, if not accelerate.

Because consumers are demanding access to more bandwidth-intensive services, many broadband providers recognize that their existing broadband infrastructure is inadequate. Accordingly, providers are investing substantial amounts of capital as part of multi-year plans to upgrade their networks by bringing fiber closer to end points and installing new electronics – all of which will produce high-quality, high-bandwidth services. These trends signal that the industry is making an inexorable and rapid transition to gigabit service. Altice, for example,

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protocol (VoIP), and with usage capacity reasonably comparable to that available in residential terrestrial fixed broadband offerings in urban areas, at reasonably comparable rates.”).

<sup>19</sup> See “Gartner Says 6.4 Billion Connect ‘Things’ Will Be in Use in 2016, Up 30 Percent From 2015,” Gartner (Nov. 10, 2015) available at <http://www.gartner.com/newsroom/id/3165317>.

<sup>20</sup> See Cisco VNI Complete Forecast Highlights Tool, available at [http://www.cisco.com/c/m/en\\_us/solutions/service-provider/vni-forecast-highlights.html#](http://www.cisco.com/c/m/en_us/solutions/service-provider/vni-forecast-highlights.html#).

<sup>21</sup> The share of total U.S. broadband subscriptions that are DSL is now at an all-time low of 15 percent, and local telephone companies continue to lose DSL subscribers to high-performance hybrid fiber-coax and fiber to the home network providers. See “Strategy Analytics: US Cable Operators Driving Fixed Broadband Penetration Higher,” Strategy Analytics (June 2, 2016) available at <https://www.strategyanalytics.com/strategy-analytics/news/strategy-analytics-press-releases/strategy-analytics-press-release/2016/06/02/strategy-analytics-us-cable-operators-driving-fixed-broadband-penetration-higher>.

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announced it will deploy 10 Gbps fiber to the home across its entire footprint.<sup>22</sup> Comcast - along with other major cable providers<sup>23</sup> - have begun deploying DOCSIS 3.1 in various cities (Chicago, Nashville, Atlanta, Detroit, and Miami) to provide up to 2 Gbps.<sup>24</sup> WOW! has announced gigabit roll-out to five markets, including Huntsville, Alabama, and Grosse Point, Michigan.<sup>25</sup> Similarly, Mediacom recently announced it is offering 1 Gbps internet service in 300 communities across Iowa.<sup>26</sup> According to the Fiber to the Home Council, “more than half of the over 1,000 FTTH providers in North America [are expecting] to be offering a Gigabit within five years.”<sup>27</sup>

### **Establishing Weightings to Reflect the Long Term Value of Broadband Service in Unserved Areas**

In accordance with the Commission’s adopted technology-neutral auction mechanism, bid amounts will be adjusted, based on the performance tier and degree of latency, to produce a final weighted cost/score, and then bids will be compared.<sup>28</sup> As set forth in the introduction to this letter, based on the justifications provided herein, ACA proposes the following weights:

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<sup>22</sup> See “Altice USA Unveils ‘Generation Gigaspeed’ A Full-Scale Fiber-To-The-Home Network Investment Plan To Enable 10 Gigabit Broadband Speeds,” Altice, available at <http://altice.net/wp-content/uploads/2016/11/Altice-pr-altice-USA-Unveils-Generation-Gigaspeed.pdf>.

<sup>23</sup> See “Report: Time Warner Cable says DOCSIS 3.1 will meet Los Angeles’ 1-Gig goal,” FierceTelecom (June 16, 2015) available at <http://www.fiercetelecom.com/telecom/report-time-warner-cable-says-docsis-3-1-will-meet-los-angeles-1-gig-goal>.

<sup>24</sup> See “Comcast Begins Rollout of Gigabit Internet In Nashville,” Comcast (June 6, 2016) available at <http://corporate.comcast.com/news-information/news-feed/gigabit-internet-nashville>.

<sup>25</sup> See “Wow cable promises gigabit Internet service in five cities by year-end,” ArsTechnica (Aug. 9, 2016) available at <https://arstechnica.com/information-technology/2016/08/wow-cable-promises-gigabit-internet-service-in-five-cities-by-year-end/>.

<sup>26</sup> See “Mediacom unveils 1 gig internet service in Iowa,” KCCI (Jan. 19, 2017) available at <http://www.kcci.com/article/mediacom-unveils-1-gig-internet-service-in-iowa/8613469>.

<sup>27</sup> See “Survey Says: Speedy Fiber Changing the Way We Use the Internet,” FTTH Council (Nov. 16, 2015) available at <http://www.ftthcouncil.org/blog/survey-says-speedy-fiber-changing-the-way-we-use-the-internet?source=1>.

<sup>28</sup> For example, if there is a bid of \$1 for the Minimum Tier with High-Latency in an area with a reserve price of \$100, the final weighted cost/score would be \$21, as both minimum and high-latency weightings are applied to the cost per location [ $\$1 + (5\% * \$100)$ ].

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Performance Tier	Proposed Weighting Percentage
Minimum	+5%
Baseline	0%
Above Baseline	-60%
Gigabit	-15%
Higher Latency (regardless of speed)	+15%

Given current and expected demand, ACA submits that its proposed weightings fulfill the auction's guiding principle to cost-effectively provide long term value for consumers in unserved areas, as well as to ensure reasonably comparable services in these areas. It is clear from market data and industry trends that Minimum and Baseline tiers do not meet consumer needs. Broadband service at a speed of 10/1 Mbps (Minimum) does not meet the Commission's own threshold for acceptable broadband service.<sup>29</sup> Further, Commission data also indicates that current consumer demand and usage in the U.S. exceeds Baseline speeds and data caps and over time that gap will grow significantly.<sup>30</sup> The Above-Baseline tier best matches consumer demand and usage over the 10-year period for the program. As for the Gigabit tier, it provides the ultimate assurance that demand and usage will not exceed the capabilities of the supported network.

Because Minimum and Baseline broadband performance cannot cost-effectively provide long term value for consumers in unserved areas nor reasonably comparable services to that received in urban areas, Above-Baseline bids should receive a significant bonus (-60 percent). In addition, for the Gigabit tier, where performance is the most-future proof but most urban consumers are not likely to subscribe for the next five years, ACA proposes that bids should

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$\$100) + (15\% * \$100) = \$21]$ . Similarly, a bid for the Gigabit Tier of \$95 would receive a cost/score of \$20, as both above-baseline and gigabit weights apply [ $\$95 + (-60\% * \$100) + (-15\% * \$100) = \$20]$ .

<sup>29</sup> See "FCC Finds U.S. Broadband Deployment Not Keeping Pace," FCC News (Jan. 15, 2015) available at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-331760A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-331760A1.pdf). See *supra*. n. 4. Many households regularly consume almost 200 GB of data each month. Additionally, the Commission has found that lower-speed technologies like DSL are generally less reliable than higher-speed cable and fiber services. See also 2016 *Measuring Broadband America Report*, ¶ 104 ("in general, consumers of higher speed broadband services, such as those provided by Cablevision, Comcast and Verizon FIOS, receive high quality services, while services provided by some DSL providers do not consistently provide high quality services.").

<sup>30</sup> See *supra*. n. 11, 12.

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receive a -15 percent advantage over Above-Baseline bids. For the marginal difference in the limited long term value of Minimum and Baseline bids, bids for the Minimum tier will receive a small penalty (-5 percent).

As for latency, the Commission has found that higher latency greatly affects the quality of real-time applications. High-Latency services cannot support today's real-applications, nor those of the future. Only low-latency high-performance tiers can reliably support today's real-time applications: SMS, IM, VoIP, web-browsing, video conferencing (Skype, GotoMeeting), cloud storage and applications (iCloud, Dropbox, Google Apps), and online gaming platforms or networks (Steam, Playstation Network).<sup>31</sup> ACA thus proposes that bids for High-Latency should receive a penalty (+15 percent).

### Assurances of Performance

In an *ex parte* filed recently in this proceeding, the "Rural Coalition" requested that the Commission "adopt strict measures to prevent any provider from getting the benefit of a weighting credit and bidding in tiers that they cannot truly deliver."<sup>32</sup> To implement this

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<sup>31</sup> See *2016 Broadband Progress Report*, ¶ 64 ("Latency is an important measurement of broadband network performance because it significantly impacts the performance of interactive, real-time applications, including VoIP, online gaming, videoconferencing, and VPN platforms.") Of available technologies, satellite is the only technology that suffers from high latency. Hughes and ViaSat satellite broadband services have latencies of 600ms and 620ms respectively; DSL ranged from 25-60ms; cable 10-30ms; and fiber 10-25ms. See *2016 Measuring Broadband America Report*. As an indication of consumer reaction to service with high latency, despite nearly universal availability, satellite broadband comprises less than 2 percent of total U.S. broadband subscriptions, and most subscribers for this service are in areas where there is no wireline broadband alternative. See "Coverage Areas," HughesNet, <https://www.hughesnet.com/how-it-works/coverage-areas>. Hughes reported 1,035,000 global broadband subscribers in 2015; Viasat reported 697,000.

<sup>32</sup> See Letter from Rebekah P. Goodheart, Counsel for the Association of Missouri Electric Cooperatives, Midwest Energy Cooperative, HomeWorks, Alger Delta, and Great Lakes Energy, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (Jan. 19, 2017). See also Letter from Stephen L. Goodman, Counsel for ADTRAN, Inc., to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (Oct. 30, 2015), in which ADTRAN noted that "fixed wireless [LTE] service would appear to be able to meet the CAF Phase II minimum speed requirements only for very low-density deployments," and it urged "the Commission to resolved expeditiously the issue of specifying a methodology for CAF recipients to measure and report speed and latency performance to fixed locations."

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concept, the group proposed, consistent with the *CAF Phase II Auction Order*, that an entity seeking to bid in the 100 Mbps or 1 Gbps tiers be required to submit technical information demonstrating it can deliver both the relevant speed and unlimited usage capacity to all locations in the eligible area.<sup>33</sup> The Commission, or a third party designated by it, would then evaluate this information in advance of bidding and determine whether the provider would be eligible to bid for the relevant performance tier.

ACA appreciates the Rural Coalition effort to address an important concern: not only would consumers in unserved areas be harmed, but the integrity of the auction would be undermined should a bidder claim its technology and network deployment meets a performance tier when in fact “in the field” it does not.<sup>34</sup> This problem could occur not only with the two upper tiers but with the Baseline tier and higher latency service as well. In addition, an advance case-by-case review for every potential bid for every unserved area would be unduly burdensome for providers and for the Commission. Rather, ACA proposes the Commission initiate a proceeding to determine the minimum criteria and engineering assumptions for networks of each technology that are presumed to satisfy the requirements of each performance tier and the two latencies. Bidders, seeking to rebut the presumptions in particular areas, would bear the burden of submitting engineering analysis for the particular unserved areas demonstrating that consumers in the unserved area would actually receive the service promised by a bidder (and effectively by the Commission in the CAF Phase II program).

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<sup>33</sup> The Rural Coalition notes requiring a winning bidder to meet the data allowance requirement for all locations is important since the winning bidder will become the eligible telecommunications carrier for that area, while the price cap incumbent in the area will receive forbearance from service obligations.

<sup>34</sup> Penalizing a winning bidder for failing to deliver the required performance is an inadequate remedy, even if the penalty is substantial. First, consumers in the unserved area will have suffered from receiving service that is “not in the public interest.” Second, a bidder may believe it can game the system and offer to address any shortfall in performance without penalty – since no other provider will be able to rapidly provide service in that area. Finally, it may prove difficult for the Commission, in the event it terminates support for a winning bidder, to efficiently re-distribute that support.

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This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules.

Sincerely,



Thomas Cohen  
Kelley Drye & Warren, LLP  
3050 K Street N.W.  
Washington, DC 20007  
202-342-8518  
tcohen@kelleydrye.com  
Counsel for the American Cable Association

cc: Nicholas Degani  
Jay Schwarz  
Amy Bender  
Claude Aiken  
Kris Monteith  
Alexander Minard  
Heidi Lankau